



DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

**[SATS No. WY-048-FOR; Docket No. OSM-2020-0005];
S1D1S SS08011000 SX064A000 222S180110;
S2D2S SS08011000 SX064A000 22XS501520**

Wyoming Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving an amendment to the Wyoming Abandoned Mine Land (AML) Reclamation Plan (hereinafter, the Wyoming Plan or Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Wyoming proposed to repeal and replace its existing AML Plan in response to OSMRE's request to amend the Plan, as well as improve the Plan's readability and operational efficiency. These changes are being submitted in response to legislative and regulatory changes made under SMCRA.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Jeffrey Fleischman, Director Denver Field Division, Office of Surface Mining Reclamation and Enforcement, Dick Cheney Federal Building, 100 East B Street, Room 4100, Casper, Wyoming 82601-1018. Telephone: (307) 261-6550. E-mail: jfleischman@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Wyoming AML Program
- II. Submission of the Amendment
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I. Background on the Wyoming AML Program

The AML Reclamation Program was established by Title IV of the Act (30 U.S.C. 1201, *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal produced. The reclamation fees collected, as well as additional appropriations, are used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop, and submit to the Secretary of the Interior for approval, a program (often referred to as a Plan) for the reclamation of abandoned coal mines.

On February 14, 1983, the Secretary of the Interior approved Wyoming's Plan. You can find general background information on the Wyoming Plan, including the Secretary's findings and the disposition of comments, in the February 14, 1983, **Federal Register** (48 FR 6536). OSMRE announced in the May 25, 1984, **Federal Register** (49 FR 22139), the Director's decision accepting certification by Wyoming that it had addressed all known coal-related impacts in the State that were eligible for funding under the Wyoming Plan. Wyoming could then proceed in reclaiming low priority noncoal projects. The Director accepted Wyoming's proposal that it would seek immediate

funding for reclamation of any additional coal-related problems that occur during the life of the Wyoming Plan. You can find later actions concerning Wyoming's Plan and plan amendments at 30 CFR 950.35.

II. Submission of the Amendment

Under the authority of 30 CFR 884.15, OSMRE directed Wyoming to update its Plan by letter dated March 6, 2019 (Document ID No. WY-053-01). OSMRE indicated the Wyoming Plan needed revisions to meet the requirements of SMCRA as revised on December 20, 2006 as part of the Tax Relief and Health Care Act of 2006 (Public Law 109-432), and in response to changes made to the implementing Federal regulations as revised on November 14, 2008 (73 FR 67576) and February 5, 2015 (80 FR 6435).

OSMRE provided Wyoming with a summary of changes to the Federal program as well as a description of the potentially required Plan amendments in the March 6, 2019 letter.

By letter dated July 21, 2020 (Administrative Record No. WY-053-02), Wyoming submitted an amendment to its Plan under SMCRA (30 U.S.C. 1201, *et seq.*). Wyoming's amendment is intended to address all required changes identified in OSMRE's March 6, 2019 letter, as well as additional changes proposed at the State's initiative to make the Wyoming Plan conform to principles of plain language that would make the Plan more reader friendly. Wyoming's amendment will repeal and replace Wyoming's existing Plan.

We announced receipt of the proposed amendment in the December 17, 2020, **Federal Register** (85 FR 81862). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because none were requested. We received two comments regarding the amendment. The public comment period ended on January 19, 2021.

III. OSMRE's Findings

The following are the findings we made concerning Wyoming's amendment to its Plan under SMCRA and the Federal regulations at 30 CFR 884.14 and 884.15. We are approving the amendment as described below.

Wyoming is repealing and replacing its entire AML Reclamation Plan with a version that is structured similar to the Federal AML Reclamation Plan content requirements for States found at 30 CFR 884.13. Wyoming's existing Plan is lengthy and difficult to navigate. Wyoming has since reorganized the Plan (Administrative Record No. WY-053-02) to make it more reader friendly by removing excess narrative and instead incorporating required information by reference. For example, Wyoming is removing and referencing **Federal Register** documentation about its AML Program approval, Program, and Plan revisions, and certification of completion of all known high priority coal hazards. Removal and incorporation by reference is appropriate because these documents are not required to be in the Wyoming Plan. Furthermore, this approach decreases the overall length of the Plan, prevents the need for additional revisions in the event of future regulatory or statutory changes, and does not alter Wyoming's authority or procedures for implementing its AML Program.

As such, the revised Plan (Administrative Record No. WY-053-02) includes a table that lists all amendments in order of the date of final publication in the **Federal Register**. In addition, Wyoming has implemented the required changes identified in OSMRE's March 6, 2019 letter to satisfy Federal requirements. Updates consistent with the 2006 amendments to SMCRA under the Tax Relief and Health Care Act of 2006 (Public Law 109-432) and the associated changes to the implementing Federal regulations on November 14, 2008 (73 FR 67576) and February 5, 2015 (80 FR 6435) have also been included. All changes to the Plan (Administrative Record No. WY-053-02) are discussed below.

Wyoming's revised Plan (Administrative Record No. WY-053-02) includes subsections entitled *Background on Title IV of the Surface Mining Control and Reclamation Act of 1977*, *Background on the Wyoming Abandoned Mine Land Reclamation Plan*, and *Purpose of the 2020 Rewrite*. Although these sections are not required under the Federal program, it provides background and context for Wyoming's certified AML Plan and does not conflict with the AML Reclamation Plan requirements found under 30 CFR 884.13.

Wyoming's revised Plan (Administrative Record No. WY-053-02) cites Wyo. Stat. section 35-11-1201, passed by the Wyoming Legislature on March 18, 1980, creating the Wyoming AML Program. This legislation vested authority over the AML Program with the Director of the Department of Environmental Quality (DEQ). Until April 1992, implementation of the AML Program was handled by the Land Quality Division within DEQ. On March 16, 1992, the Wyoming legislature created the AML Division at DEQ, which gave this Division responsibility over the AML Program. The program amendment to incorporate the 1992 statutory changes that created a separate AML Division was approved by the OSMRE Director and published in the **Federal Register** on April 13, 1992 (57 FR 12731). Under this designation, the AML Division was also authorized to receive and administer grants under 30 CFR Part 886. Because Wyoming's AML Program is now certified, it no longer receives grant funding from OSMRE under 30 CFR part 886, but rather it receives certified state grant funding under 30 CFR part 885.

Wyoming provided an updated January 3, 2020 legal opinion letter from the State Attorney General, which confirms that the Wyoming DEQ continues to have the legal authority to oversee and implement Wyoming's AML Program. This is consistent with 30 CFR 884.14(a)(2). Previous versions of this letter have been removed from Wyoming's Plan (WY-053-02) because they are superseded by the new letter. The legal

opinion required by 30 CFR 884.13(a)(2) is attached as Appendix B in the Plan (Administrative Record No. WY-053-02).

According to 30 CFR 884.13(a)(3), a State Reclamation Plan must include a description of the policies and procedures to be followed by the designated agency conducting the reclamation program, including the purposes of the State reclamation program. Wyoming's Plan (Administrative Record No. WY-053-02) includes a Policies and Procedures section that provides a description and legal citation for its AML Program which are consistent with 30 CFR 884.13(a)(3) introductory text and (a)(3)(i).

Wyoming's revised Plan (Administrative Record No. WY-053-02) includes a section titled *Ranking and Selection*, which provides eligibility requirements and prioritization criteria for both coal and noncoal hazards, as well as Public Facilities projects deemed necessary for public health and safety by the Governor. In addition, this section includes a discussion of Wyoming's prioritization matrix, which is used by Wyoming to rank AML projects and reaffirms that any noncoal reclamation activities will reflect the priorities under 30 CFR 875.15. The prioritization matrix is included in Appendix F. The Ranking and Selection section also indicates the first priority for reclamation will be for high priority coal sites but reserves the Wyoming AML Program's ability to reclaim noncoal land, water, and facilities as allowed by Title IV, Section 411(b) through (g) (30 U.S.C. 1240a(b)-(g)), with approval by OSMRE and after the issuance of an Authorization to Proceed (ATP), which is required for all projects. This section is consistent with the State Reclamation Plan requirements of 30 CFR 884.13(a)(3)(ii).

Wyoming's revised Plan (Administrative Record No. WY-053-02) also incorporates via reference the provisions from 30 CFR 875.19 (80 FR 6435-6448), which extend limited liability protection to noncoal reclamation projects as long as those projects are completed in accordance with 30 CFR part 875 and do not result in damages

as the result of intentional misconduct or gross negligence. Furthermore, it explains that Reclamation projects will not be undertaken without first receiving an ATP from OSMRE. This is in accordance with section 405(l) of SMCRA (30 U.S.C. 1235(l)) and consistent with 30 CFR 874.15 and 875.19.

Wyoming's revised Plan (Administrative Record No. WY-053-02) includes a section titled *AML Emergency Response*, which acknowledges that emergency conditions may arise at times which require quick responses. This section outlines the processes by which such emergency conditions are addressed, because the Wyoming AML Program does not have an approved emergency response program under section 410 of SMCRA (30 U.S.C. 1240).

Under the section titled, *Coordination with Other Programs*, the revised Plan (Administrative Record No. WY-053-02) lists the other agencies and offices with which the Wyoming AML Program will coordinate on a case-by-case basis during reclamation activities. These groups include city and county governments, state agencies, OSMRE, other Federal agencies, Tribes, and National Association of Abandoned Mine Land Programs (NAAML) members. This section in the proposed Plan is consistent with the requirements of 30 CFR 884.13(a)(3)(iii).

According to the section titled Land Acquisition, Management and Disposal, the revised Wyoming Plan (Administrative Record No. WY-053-02) incorporates all applicable Federal statutory sections by reference, which ensures these activities will occur in accordance with established Federal AML requirements. Thus, this section in Wyoming's Plan is consistent with the requirements of 30 CFR 884.13(a)(3)(iv).

Wyoming's revised Plan (Administrative Record No. WY-053-02) includes a section titled *Reclamation on Private Land and Rights of Entry*, which indicates Wyoming will follow guidelines in Section 407 of SMCRA (Acquisition and Reclamation of Land Adversely Affected by Past Coal Mining Practices) (30 U.S.C.

1237) and Title 35, Chapter 11, Section 1204 of the Wyoming Environmental Quality Act when undertaking reclamation work on private land. Wyoming also states that consent for entry will be obtained before Wyoming AML staff or its contractors enter private land, but, if consent is denied, procedures outlined in 30 CFR 877 (Rights of Entry) and Title 35, Chapter 11, Section 1204 (d-e) of the Wyoming Environmental Quality Act will be followed. Thus, this section of Wyoming's revised Plan is consistent with the Plan content requirements of 30 CFR 884.13(a)(3)(v) and (vi).

Wyoming's revised Plan (Administrative Record No. WY-053-02) includes a section titled *Public Participation*, which details the State and Federal laws the Wyoming AML Program must comply with pertaining to public participation, scoping, and comments on proposed actions. Because this section of the Plan provides the procedures and processes the Wyoming AML Program will follow to ensure public involvement in its reclamation program, this section is consistent with the Plan content requirements of 30 CFR 884.13(a)(3)(vii).

As previously discussed, Wyoming's revised Plan (Administrative Record No. WY-053-02) includes all required sections meeting the requirements of 30 CFR 884.13(a)(3)(i) through (vii), to include: the purposes of the State reclamation program; specific criteria for ranking and identifying projects to be funded; the coordination of reclamation work among the State reclamation program and all applicable State and Federal agencies; policies and procedures regarding land acquisition, management, and disposal; reclamation on private land; rights of entry; and public participation in the State reclamation program. As such, Wyoming's revised Plan (Administrative Record No. WY-053-02) is consistent with the AML Reclamation Plan content requirements found at 30 CFR 884.13(a)(3).

Federal regulations at 30 CFR 884.13(a)(4)(i) require a description of the designated agency's organization and relationship to other State entities that will

participate in or augment the State's reclamation capacity. Wyoming's revised Plan (Administrative Record No. WY-053-02) includes a section titled *Policies and Procedures*, under which a subsection, titled *Department Structure*, discusses these descriptions and relationships and also provides an organizational chart that depicts the Wyoming DEQ's AML Organization.

Federal regulations at 30 CFR 884.13(a)(4)(ii) require a description of the personnel staffing policies which will govern the assignment of personnel to the State reclamation program. Wyoming's revised Plan (Administrative Record No. WY-053-02) includes a section titled *Staffing and Personnel Policies*, which explains that the Wyoming AML program will comply with all Federal statutes and requirements relating to nondiscrimination. In addition, it outlines the hiring practices, position qualifications, rules of behavior for employees, and staffing levels that are controlled by budget acts approved by the Wyoming Legislature. This change does not alter Wyoming's staffing and personnel policies because it still provides the information required under 30 CFR 884.13(a)(4)(ii), but in a more condensed format.

Federal regulations at 30 CFR 884.13(a)(4)(iii) require a description of State purchasing and procurement systems to meet the requirements of Office of Management and Budget Circular A-102, Attachment 0. Federal grantmaking agencies were previously required to issue a grants management common rule to adopt governmentwide terms and conditions for grants to States and local governments. As a result, the attachments to Circular A-102, including Attachment 0 referenced in 30 CFR 884.13(a)(4)(iii), have been replaced by the grants management common rule at 2 CFR part 200. Although the Federal SMCRA regulations have not yet been updated to reflect this change, it is reflected in the revised Wyoming Plan (Administrative Record No. WY-053-02) under the section titled *Purchasing and Procurement*, where Wyoming indicates its purchasing and procurement policies are consistent with 2 CFR part 200. This section of the Plan

provides descriptions of Wyoming's purchasing and procurement rules, the bid process, and the use of OSMRE's Federal Applicant Violator System (AVS) to determine the eligibility of construction contractors and professional services firms. As such, all of the descriptions in the Purchasing and Procurement section of the revised Plan are consistent with the requirements of 30 CFR 884.13(a)(4)(iii).

Federal regulations at 30 CFR 884.13(a)(4)(iv) require a description of the accounting system to be used by the agency including specific procedures for operation of the Abandoned Mine Reclamation Fund. Wyoming's revised Plan (Administrative Record No. WY-053-02) includes a section titled *Accounting System*, which discusses the Wyoming Online Financial System (WOLFS) and how it conforms to 2 CFR part 200. In addition, this section indicates that the DEQ, and more specifically the AML Division, will safeguard all funds, property, and assets in the reclamation program, submit programmatic and financial reports to OSMRE as required, and explains how audits are conducted and any recommendations implemented.

As previously discussed, Wyoming's revised Plan (Administrative Record No. WY-053-02) includes all required sections meeting the requirements of 30 CFR 884.13(a)(4)(i) through (iv) that summarize overall AML Policies and Procedures, including Department Structure, Staffing and Personnel Policies, Purchasing and Procurement, and the Accounting System. As such, Wyoming's revised Plan (Administrative Record No. WY-053-02) is consistent with the AML Reclamation Plan content requirements found at 30 CFR 884.13(a)(4).

Wyoming's revised Plan (Administrative Record No. WY-053-02) includes sections titled *Description of Reclamation Activities* [in accordance with 30 CFR 884.13(a)(5)(i)], Wyoming AML Problems [in accordance with 30 CFR 884.13(a)(5)(ii)], and Plan to Address Problems [in accordance with 30 CFR 884.13(a)(5)(iii)], all of which provide general descriptions derived from available data of the reclamation activities to

be conducted under the Wyoming Plan including: a map showing the general location of known or suspected eligible lands and waters; a description of the problems occurring on those lands and waters; and how the Plan proposes to address each of the problems, including descriptions of the hazard abatement strategies. Because Wyoming is certified, the State has already completed all known high priority coal hazards. Therefore, the revised maps and information reflect the State's certified status, identifying historic mining areas where AML hazards may occur, as well as general AML hazard types and abatement strategies without identifying specific project areas. Individual project approval and funding are appropriately handled through the ATP process under 30 CFR 885.16(e). Thus, sections of Wyoming's revised Plan titled *Description of Reclamation Activities*, Wyoming AML Problems, and Plan to Address Problems are consistent with the AML Plan content requirements of 30 CFR 884.13(a)(5).

Wyoming's revised Plan (Administrative Record No. WY-053-02) includes sections titled: *Geographic Areas of Wyoming*; *Wyoming Economic Base* (to include subsections of: Economy, Energy, Agriculture, Economic Diversification, Population, Labor Force, and Unemployment Rate); *Significant Esthetic, Historic or Cultural*, and *Recreational Values*; as well as Endangered and Threatened Plant, Fish, and Wildlife, and Habitat. These sections all provide a general description, derived from available data, of the conditions prevailing in the different geographic areas of the State where reclamation is planned. The available data is derived from the Bureau of Labor and Department of Energy, as well as other State and Federal agencies, such as the Wyoming Game and Fish Department and the U.S. Fish and Wildlife Service. In addition, a map is included which indicates the locations of Wyoming coal fields. Thus, Wyoming's revised Plan provides descriptions of the prevailing conditions in the State where reclamation may occur consistent with the requirements of 30 CFR 884.13(a)(6).

Wyoming's revised Plan (Administrative Record No. WY-053-02) includes a section titled *Additional Requirement for Certified States and Indian Tribes*, which provides a commitment to address all eligible coal problems found or occurring after certification as required under 30 CFR 875.13(a)(3) and 875.14(b). In addition, this section expands upon the prioritization matrix used by Wyoming to rank AML projects, which is found in Appendix F. Wyoming indicates it will prioritize coal hazards over noncoal hazards unless a noncoal hazard site ranks as a high human health or safety hazard, in which case such a project will be prioritized in tandem with coal projects. This will allow for reclamation of both coal and noncoal projects to be conducted on parallel schedules without impacting Wyoming's response cycles on coal problems. By committing to give priority to addressing eligible coal problems found or occurring after certification as required in 30 CFR 875.13(a)(3) and 875.14(b), Wyoming's revised Plan is consistent with the AML Plan content requirements of 30 CFR 884.13(b).

Finally, Wyoming's revised Plan (Administrative Record No. WY-053-02) includes six Appendices. Appendix A, titled *Public Records Regulation*, incorporates new language into the Wyoming Plan regarding public records, which reflects a change to the Wyoming AML regulations approved by state statute in 2018. Appendix B, titled *Legal Opinion*, provides an updated letter from the Office of the Attorney General that confirms that the Wyoming DEQ continues to have the legal authority to oversee and implement Wyoming's AML Program. Appendix C, titled *Policy and Purpose of the Environmental Quality Act*, provides the Wyoming statutes and general provisions regarding public health and safety under which the Wyoming AML Division operates. Appendix D, titled *Historic Documents*, provides a bulletized list of the history of the Wyoming AML Program, including the original approval of the program, the State's certification, subsequent amendments, and other State legislation related to the AML Program. Appendix E, titled *Census Data*, provides population characteristics,

businesses, and geographical information for Wyoming. Appendix F, titled *Priority Ranking Matrix*, provides an example of the ranking criteria and weight factors which are used to calculate a weighted sum, which is then used to rank AML projects by priority.

Thus, we find that Wyoming's revised Plan (Administrative Record No. WY-053-02), as amended, meets all content requirements stipulated under 30 CFR 884.13 while also updating the Plan to be consistent with changes made to the Federal program in 2006, 2008, and 2015. Furthermore, Wyoming's revised Plan meets the requirements of OSMRE's March 6, 2019 letter, and any removals of outdated content support Wyoming's goal of streamlining its Plan to make it more reader friendly. We, therefore, approve these changes and the Plan.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on Wyoming's amendment. One comment (Administrative Record No. WY-053-08) was received, which expressed a concern that the public would not be allowed to provide comments on the **Federal Register** in the future, which would therefore not allow the American people to have a general say in the future of the coal industry and regulations being put in place, thereby causing issues related to climate change. This comment appeared to be directed toward the DEQ's Regulatory Program for active operating mines, rather than the Wyoming AML Program, and the comment did not address the Wyoming Plan amendment. Furthermore, public comment on **Federal Register** notices involving amendments to State programs is routinely sought and allowed.

Federal Agency Comments

On August 25, 2020, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on Wyoming's amendment from various Federal agencies with an actual or potential interest in the Wyoming AML Program, including its

Plan (Administrative Record No. WY-053-04). We received one comment. In a letter dated September 17, 2020 (Administrative Record No. WY-053-07), the Wyoming Game and Fish Department (WGFD) stated the list of threatened and endangered species on pages 17-18 of the revised Plan did not include the Kendall Warm Springs Dace and several other threatened and endangered species in Wyoming. The WGFD recommended contacting the U.S. Fish and Wildlife Service to obtain an updated list of all threatened and endangered species in the State, which Wyoming DEQ did, and this updated list of species is now reflected in the revised Plan.

Environmental Protection Agency (EPA) Concurrence and Comments

OSMRE solicited the EPA's comments on the proposed amendment (Administrative Record No. WY-053-04). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

OSMRE solicited comments on the proposed amendment from the SHPO (Administrative Record No. WY-053-04) and the ACHP (Administrative Record No. WY-053-04). The SHPO did not respond to our request. By email dated January 4, 2021 (Administrative Record No. WY-053-09), the ACHP indicated its belief that the revised Wyoming Plan did not have any involvement with OSMRE's National Historic Preservation Act Section 106 review process in Wyoming, and therefore ACHP did not have any comments on the Plan. OSMRE agrees with ACHP's assessment that the revised Wyoming Plan does not alter OSMRE's Section 106 review process in Wyoming.

V. OSMRE's Decision

Based on the above findings, we are approving Wyoming's Plan amendment that was submitted on July 21, 2020. To implement this decision, we are amending the Federal regulations at 30 CFR part 950 that codify decisions concerning the Wyoming Plan. In accordance with the Administrative Procedure Act, this rule will take effect 30 days after

the date of publication. Section 405(a) of SMCRA requires that each State with an AML program must have an approved State regulatory program pursuant to section 503 of the Act. Section 503(a) of the Act requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes.

SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630 – Governmental Actions and Interference with Constitutionally Protected Property Rights

This rule will not affect a taking of private property or otherwise have taking implications that would result in public property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on an analysis of the corresponding Federal regulations.

Executive Orders 12866—Regulatory Planning and Review and 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Executive Order 12988 - Civil Justice Reform

The Department of the Interior has reviewed this rule as required by Section 3(a) of Executive Order 12988. The Department has determined that this **Federal Register** notice meets the criteria of Section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected

conduct, rather than a general standard, and promote simplification and burden reduction. Because Section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive Order to the quality of this **Federal Register** document and to changes to the Federal regulations. The review under this Executive Order did not extend to the language of the Wyoming Plan or to the Plan amendment that the State of Wyoming submitted.

Executive Order 13132 - Federalism

This rule is not a “policy that [has] Federalism implications” as defined by Section 1(a) of Executive Order 13132 because it does not have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Instead, this rule approves an amendment to the Wyoming Plan submitted and drafted by that State. OSMRE reviewed the submission with fundamental federalism principles in mind as set forth in Section 2 and 3 of the Executive Order and with the principles of cooperative federalism as set forth in SMCRA. *See, e.g.*, 30 U.S.C. 1201(f). As such, pursuant to section 503(a)(1) and (7) (30 U.S.C. 1253(a)(1) and (7)), OSMRE reviewed Wyoming’s amendment to ensure that it is “in accordance with” the requirements of SMCRA and “consistent with” the regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department’s consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Tribes or on the distribution of power and responsibilities between

the Federal government and Tribes. Therefore, consultation under the Department's tribal consultation policy is not required. The basis for this determination is that our decision is on the Wyoming program that does not include Tribal lands or regulation of activities on Tribal lands. Tribal lands are regulated independently under the applicable, approved Federal program.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not significant energy action under the definition in Executive Order 13211, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. We are not required to provide a detailed statement under the National Environmental Policy Act of 1969 (NEPA) because this rule qualifies for a categorical exclusion under the U.S. Department of the Interior Departmental Manual, part 516, section 13.5(B)(29).

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (15 U.S.C. 3701 *et seq.*) directs OSMRE to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. OMB Circular A-119 at p. 14. This action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with SMCRA.

Paperwork Reduction Act

This rule does not include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon corresponding Federal regulations for which an economic analysis was prepared, and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR part 950

Intergovernmental relations, Surface mining, Underground mining.

David Berry, Regional Director
Interior Unified Regions 5, 7-11

For the reasons set out in the preamble, 30 CFR part 950 is amended as set forth below:

PART 950 – WYOMING

1. The authority citation for part 950 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 950.35 is amended in the table by adding an entry in chronological order by “Date of final publication” to read as follows:

§ 950.35 Approval of Wyoming abandoned mine land reclamation plan amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
<p>*****</p> <p>July 21, 2020</p>	<p>**</p> <p>[Insert date of publication in the Federal Register]</p>	<p>Repeal and replace Certified AML Plan. Response to 884 letter and State initiative streamlining of Plan to be consistent with changes to federal program and extends limited liability protection for certain coal and noncoal reclamation projects.</p>

[FR Doc. 2021-23292 Filed: 10/25/2021 8:45 am; Publication Date: 10/26/2021]